THE HONOURABLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION No. 21271 of 1995

Between:

Bezwada Suryaprakasa Rao and

Others. …Petitioners

And

The District Collector,

East Godavari District at

Kakinada and another …Respondents.

Counsel for the Petitioners : Sri N.Subba Reddy for

Sri T.Anil Kumar.

Counsel for the Respondents : Govt. Pleader for

Land Acquisition

Dr.P.B.Vijaya Kumar

Dated: March 24, 2006

ORAL ORDER;

The petitioners filed this writ petition for issuance of a writ of mandamus to declare the entire proceedings resulting in the Notice in Ref.No.B/3857/92 dated 21-8-1995

issued by the 2nd respondent as illegal, null and void and violative of Articles 14, 19 21 and 300-A of the Constitution of India.

The first petitioner's father Lakshminarasaiah, Seetharamaswamy and Narayanaswamy are brothers who succeeded to hold the property of an extent of Ac.5-30 cents in Sy.No.72 situated at Thimmapur village under Kakinada Rural Mandal, East Godavari District, out of which an extent of Ac.1-28 cents was sought to be acquired for the purpose of laying an approach road to the Post Graduate Centre, Andhra University and accordingly the Revenue Divisional Officer, Kakinada issued an urgent notice vide Ref.No.B/3857/92 dated 28-12-1993 to the petitioners calling upon them to appear before him on 5-1-1994. Their enquiries reveal that a notification in G.O.Rt.No.1777 Education (VE) Department dated 21-10-1989 under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') was published in Andhra Bhoomi, Kakinada Edition dated 6-1-1990 proposing to acquire the land in Sy.Nos. 69 and 72 of Thimmapuram village. The petitioners claim to have no information about the issuance of Section 6 notification and contend that the very publication of the notification dated 21-10-1989 in the local newspaper on 6-1-1990 i.e., after two and half months is patently illegal and vitiates the entire proceedings, and the respondents have issued notice dated 21-8-1995 requiring them to appear in person or by authorized agent on 11-9-1995 before the 2nd respondent showing the nature of interest in the land in Sy.No.72/1 and the amount of compensation for such interest with particulars thereof and their objections, if any, to the measurement made under Section 8 of the Act. The said notice also requires the petitioners to give a statement containing the names of every other person possessing any interest in the land or any part of it as co-proprietor, tenant or otherwise, the nature of such interest and the rents/profits, if any, received or receivable on account of it for three years next preceding the date of the statement.

The grievance of the petitioners is that by seeking to acquire their lands without regard to the contiguity and convenience and without acquiring the neighbours' lands, the acquisition is maliciously motivated and by acquiring only the lands of the petitioners there will be no approach road to P.G. Centre at all. More over the Samadhis and graves of their ancestors are in the very piece of Ac.1-28 cents which has got very immense sentimental value for them. The said land is still in possession of the petitioners.

This Court while admitting the writ petition passed the following order:

> "The enquiry shall go on and the petitioners are permitted to participate in the said enquiry and the award shall also be passed in accordance with law. However, the petitioners shall not be dispossessed from their land nor compensation paid, pending further orders on this petition."

In response to the Rule nisi, the Land Acquisition Officer filed a counter stating that the land in question is being acquired for the purpose of approach road to Andhra University, P.G. Centre, Kakinada and the petitioners have deliberately avoided to implead the beneficiary as one of the respondent and on this ground alone, the writ petition is liable to be dismissed.

It is further averred in the counter affidavit that the Special Officer, Andhra University, P.G. Education Centre, Kakinada has sent a requisition for acquisition of land in Sy.No.72 admeasuring Ac.1-28 cents for the purpose of laying approach road from Kakinada – Pithapuram main road to P.G. Centre at Thimmapuram village of Kakinada Rural Mandal, East Godavari District which is urgent in nature. Pursuant to the said request, an inspection was made in respect of the land in question and it was found that there are tombs in an extent of Ac.0-07 cents for which the Special Officer, Andhra University, P.G. Education Centre, Kakinada has agreed to exclude the said Ac.0-07 cents from the acquisition and accordingly proposals were sent to the Collector, Kakinada. The District Collector, East Godavari District, Kakinada in turn forwarded the said proposal to the Government for approval. After approval, the Government published the draft notification under Section 4 (1) of the Act in the Gazette on
9-6-1995 by dispensing with enquiry under Section 5-A of the Act invoking the provisions under Section 17 (4) of the Act due to urgency and the substance of which was also published in two daily newspapers, namely Visalandhra on 7-7-1995 and Coasta Vani. In order to comply with the mandatory provisions Section
4 (1) notification was also published in the locality on 23-6-1995. Thereafter, declaration under Section 6 of the Act was approved by the Government on 16-6-

1995 and the same was published in the Gazette on 29-6-1995 apart from publishing the same in two daily newspapers. After publication of notification and declaration, notices as contemplated under Section 9 (1) and 10 of the Act were published on 21-8-1995 and notices under Section 9 (3) and 10 were issued on 21-8-1995 and also served on the persons interested on 23-8-1995 calling upon them to appear for award enquiry on 11-9-1995. The said notices were also served on the petitioners whose names were entered in the revenue records. While so the interested persons did not attend the award enquiry and 80% of the tentative value of the land is kept in revenue deposits to enable the Revenue Divisional Officer/Land Acquisition Officer to tender with the owners before taking possession of the land. Before payment of 80% of the land value, the landowners were asked to submit ownership particulars of the land. Since there was urgency, the lands in question covered by Sy.Nos. 72/1 and 72/2 to an extent of Ac.1-21 cents of Thimmapuram village was taken possession on 20-9-1995 duly conducting panchanama. After taking possession, formation of road has been commenced. At that stage they received interim order from this Court.

It is specifically averred in para 4 of the counter-affidavit that notification under Section 4 (1) of the Act was published in the Gazette on 9-6-1995 followed by declaration under Section 6 published in the Gazette on 29-6-1995 duly complying with the mandatory provisions under Section 4 (1) and 6 of the Act. Thereafter notices as contemplated under Sections 9 (1) and 10 were published and notices under Section 9 (3) and 10 dated
21-8-1995 were served on the petitioners on 25-8-1995 calling upon them to participate in the award enquiry. The petitioners having attended the enquiry and having submitted in writing that they would come and submit their claim statement on 13-9-1995 deliberately avoided to file any petition or did not care to appear on that date. Since the petitioners did not turn up, in view of the urgency having no other option, the respondents have taken possession of the land on 20-9-1995 after conducting panchanama.

During the pendency of the writ petition, the Special Officer, AUMSN, P.G. Centrel, Thimmapur village, Kakinada Rural Mandal, East Godavari Distfict filed a petition in W.P.M.P.No.11488 of 2004 to implead him as respondent No.3, since he is

necessary and proper party to the writ petition. The said petition is ordered today.

Sri N.Subba Reddy, learned senior Counsel appearing on behalf of the petitioners contends that subsequent to filing of the writ petition the respondents have acquired land from the Endowments department to have an approach road and the said road was accordingly laid. In view of the same, there is no necessity for the respondents to acquire the land in question that too dispensing with the enquiry under Section 5-A of the Act for the purpose of laying road by invoking the urgency clause under Section 17 (4) of the Act is not at all warranted and the authority ought to have conducted an enquiry into the necessity. Further any delivery effected prior to the date of interim order is not a proper delivery and unless it is actually delivered to the respondents, it cannot be deemed as delivery of possession. In spite of the interim order, the Land Acquisition Officer failed to pass award within two years and the entire notification becomes lapsed.

Learned Government Pleader produced the entire record which discloses issuance of draft declaration, the requisitioning department depositing 80% of the compensation for taking delivery of the land and on publication of notification and declaration, notices as contemplated under Section 9 (1) and 10 of the Act were published on 21-6-1995 calling upon the petitioners to appear for Award enquiry on 11-9-1995. On that one Sri P.Krishna Rao, Advocate filed Vakalat on behalf of Suryaprakash Rao on
11-9-1995 before the Revenue Divisional Officer. The record produced by the respondents also discloses that the proposals were initiated as early as in the year 1993 and even at the stage of proposal for acquiring the land, all the petitioners were given notices even before issuance of notification under Section 4 (1) of the Act. The lands were identified after due notice to the petitioners calling upon them for negotiation through urgent notice dated 28-12-1993. The petitioners and other landowners also participated in the negotiations on 5-1-1994. Only on the said date, proposals were initiated by the Revenue Divisional Officer for acquiring the land and 80% of the compensation was deposited by the respondents in view of the urgency to have the land and to take possession of the property.

Learned Government Pleader contends that the other landowner whose land was acquired by the respondents through the same notification has filed W.P.No.20988 of 1995 before this Court. He also filed xerox copy of the order in W.P.M.P.No.25780 of 1995 where this Court granted stay of all further proceedings including the delivery of possession of the land of an extent of 774 Sq. yards or Ac.0.14 cents in Sy.No.72/1 in Thimmapur village, East Godavari District subsequent to the Section 4 (1) notification of the 1st respondent dated 9-6-1995 until further orders. The said order passed by this Court is also available in the record produced by the Land Acquisition Officer.

In view of the stay granted by this Court in the other writ petition, though there is a direction to proceed with the award enquiry, the Land Acquisition Officer could not pass the award within two years in the case on hand. But once the possession of the land is handed over to the respondents on their depositing 80% of the compensation, the acquisition proceedings will not be lapsed.

Learned senior counsel emphatically submits that since the respondents have acquired the land by invoking the provisions of Section 17 (4) of the Act due to urgency and that too without conducting enquiry, any delivery effected prior to the date of interim order is not a proper delivery and unless there is actual delivery of the land, it cannot be deemed as delivery of possession and hence failure to pass the award within two years, the entire notification has to be quashed. I consider that this argument is flawed. Section 4 (1) notification will not be lapsed in view of the interim order passed by this Court in the above W.P.M.P.No.25780 of 1995. I proceed to consider the next argument presented by the learned counsel that the authorities are under an obligation to conduct an enquiry under Section 5-A of the Act and the petitioners cannot be deprived of their right without conducting an enquiry under Section 5-A of the Act. The combined sketch, which was prepared for acquisition of the land is made available in the file which clearly shows that Sy.No.72 is intervening in between the Kakinada - Pithapuram National Highway 214 and Sy.Nos. 112 and 73, which were acquired by the respondents apart from Sy.Nos. 97, 111, 118; whereas Sy.Nos. 112 and 73 is divided by road from the other survey

numbers. Sy.No.72 is strategically located which completely blocks access to the main road, which necessitated to acquire the said land on the requisition made by the Andhra University for a public purpose. In view of the same, the respondents have invoked the urgency clause for acquiring the said land from the petitioners and other land owners and on deposit of 80% of the compensation, possession of the same has been taken in response to the proceedings issued by the Revenue Divisional Officer dated 16-9-1995 in Ref.B.3857/92 directing the Mandal Revenue Officer to take possession of the property and hand over the same to the requisitioned department and report compliance on or before 21-9-1995.

It is well settled that once possession of the land is taken and delivered to the requisitioned department, the notification will not be lapsed for failure of passing of the Award. Further this Court in W.P.M.P.No.25780 of 1995 in W.P.No.20988 of 1995 stayed all further proceedings including delivery, which includes passing of the award pursuant to the notification under Section 4 (1) of the Act. The said writ petition was dismissed on 3-2-2005. In view of the same, I do not see any merit in the submission made by the learned senior counsel that the notification will lapse on failure of passing of the Award and the authorities are not justified in dispensing with Section 5-A enquiry.

The writ petition fails and is accordingly dismissed. No order as to costs.

March 24, 2006.

GRR